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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Albion, Honeoye Falls, and South Bristol

Township, New York)

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MM Docket No. 98-8

RM-9178

NOTICE OF PROPOSED RULE MAKING**Adopted: January 21, 1998****Released: January 30, 1998**

Comment Date: March 23, 1998

Reply Comment Date: April 7, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Citicasters Co. ("petitioner") requesting: (1) the reallocation of Channel 297A from Honeoye Falls, New York, to South Bristol Township, New York, and modify the license of Station WRCD to specify South Bristol Township as its community of license; (2) the reallocation of Channel 236B from South Bristol Township to Honeoye Falls and the modification of Station WNVE's license to specify Honeoye Falls as its community of license; and (3) the substitution of Channel 271A for vacant but applied-for Channel 238A at Albion, New York. Petitioner is the licensee of both stations and states that it will apply for each channel, if allotted as requested.

2. Petitioner proposes the reallocation and modification of the stations' licenses under the provisions of Section 1.420(i) of the Commission's Rules. In support, it states that the reallocation of Station WRCD from Honeoye Falls to South Bristol Township and Station WNVE from South Bristol Township to Honeoye Falls will result in the larger of the two communities, Honeoye Falls, being served with the higher powered Class B station. Honeoye Falls has a 1990 U.S. Census population of 2,340 persons while South Bristol Township has a 1990 U.S. Census population of 1,663 persons. Further, petitioner states that the reallocation of the channels will allow a net increase 208,565 persons being served with their 1 mV/m contour. Further, it contends that neither community will be deprived of its sole local existing service since it is requesting a swap of existing stations.

3. Petitioner states that Station WNVE at South Bristol Township, operating on Channel 236B, currently provides 60 dBu service to 788,995 persons within an 8,560 square kilometer area. However, if Station WNVE operates on Channel 236B as a Honeoye Falls station, petitioner states that it will serve 981,747 persons within a 7,117 square kilometer area.

Likewise, Station WRCD, as a Honeoye Falls station operating on Channel 297A, currently provides service to 298,763 persons within a 2,515 square kilometer area. However, as a South Bristol Township station, Station WRCD will serve 94,103 persons within a 2,515 square kilometer area. Thus, it states that there will be a gain population of 287,906 persons within a 717 kilometer area and a loss population of 79,341 persons within a 1,143 square kilometer area, for a net gain in population served of 280,565 persons.

4. A staff engineering analysis finds that the channel swap would result in a service population gain of 287,906 persons and a loss of service by 79,341 persons within the stations 60 dBu contours. However, no unserved or underserved areas will be created within the loss area. Further, our analysis shows that if Channel 236B is reallocated to Honeoye Falls, Station WNVE would provide coverage to 100% of the Rochester, New York, Urbanized Area, while the current Honeoye Falls station, Station WRCD, operating on Channel 297A covers only one or two percent of the Urbanized Area.

5. We believe petitioner's proposal warrants consideration since the allotment of Channel 236B to Honeoye Falls could provide the larger community with a wide coverage area FM service while retaining a local service at South Bristol Township. However, since both communities presently have local service, the only benefit appears to be the provision of an additional service to the Rochester Urbanized Area. Therefore, we request that the petitioner provide any additional information which would demonstrate how the reallocation of the channels would result in a preferential arrangement of allotments. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part and denied in part, 5 FCC Rcd 7094 (1990). See also, Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

6. Channel 236B can be allotted to Honeoye Falls in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 16.5 kilometers (10.3 miles) northeast, to accommodate petitioner's desired transmitter site. This site is short-spaced to Stations CKQT-FM, Channel 235B, Oshawa, Ontario, and CKDS-FM, Channel 237C1, Hamilton, Ontario, Canada. Channel 297A can be allotted to South Bristol Township in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) northwest, to accommodate petitioner's desired transmitter site. Channel 271A can be allotted to Albion in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction. This allotment would be short-spaced to Station CFNY-FM, Channel 271C1, Brampton, Ontario, Canada, and to the vacant Channel 272B at Belleville, Ontario, Canada.¹ Honeoye Falls, South Bristol Township and

¹ The coordinates for Channel 236B at Honeoye Falls are 43-02-00; 77-25-17. The coordinates for Channel 297A at South Bristol Township are 42-44-47; 77-25-35. The coordinates for Channel 271A at Albion are 43-14-48; 78-11-36.

Albion are all located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, concurrence by the Canadian Government in the allotments is required. Concurrence by the Canadian Government in the Honeoye Falls and Albion allotments will be requested as specially negotiated short-spaced allotments.

7. We recognize that there are now two pending applications for Channel 238A at Albion. However, at the time the petition was filed, no application had been filed. Therefore, the petitioner need not protect the transmitter sites proposed by the applicants, Calvary Chapel of the Westside, Inc. (BPH-970529MD) and the petitioner herein, Citicasters Company (BPH-970529MC). A staff engineering study shows that the transmitter site specified in the application filed by Calvary Chapel of the Westside, Inc. would be short-spaced to Station WMJQ, Channel 273B, Buffalo, New York, as well as to Station CFNY-FM, Channel 271C1, Brampton, Ontario, Canada, and vacant Channel 272B, Belleville, Ontario, Canada, if modified to specify operation on Channel 271A. The transmitter site specified in Citicasters Company's application would be short-spaced to Station CFNY-FM at Brampton, Ontario. A copy of this Notice will be sent to Calvary Chapel of the Westside, Inc., and should the changes proposed herein ultimately be adopted, they would be allowed to amend their applications to specify new transmitter sites without loss of cut-off protection.

8. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Albion, New York	238A	271A
Honeoye Falls, New York	297A	236B
South Bristol Township, New York	236B	297A

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before March 23, 1998, and reply comments on or before April 7, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Marissa G. Repp
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(Counsel to petitioner)

11. IT IS ORDERED, That the Commission shall send, by Registered Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following applicants: Calvary Chapel of the Westside, Inc., 67 L:yell Avenue, Spencerport, NY 14559 (BPH 970529MD); and Citicasters Company, 50 East Rivercenter Blvd., Suite 1200, Covington, KY 41011 (BPH-970529MC).

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.